

**MEMORANDUM OF UNDERSTANDING  
ON  
WAGES, HOURS, AND OTHER TERMS AND  
CONDITIONS OF EMPLOYMENT**



**FREMONT POLICE  
MANAGERS' ASSOCIATION  
AND  
CITY OF FREMONT**



**TERM OF AGREEMENT  
JULY 1, 2011 – JUNE 30, 2013**

**CITY OF FREMONT**  
**MEMORANDUM OF UNDERSTANDING**  
**FREMONT POLICE MANAGERS' ASSOCIATION**  
**2011-2013**  
**TABLE OF CONTENTS**

<b>CHAPTER 1. ADMINISTRATIVE.....</b>	<b>1</b>
ARTICLE I. PARTIES TO UNDERSTANDING .....	1
ARTICLE II. RECOGNITION .....	1
ARTICLE III. NON-DISCRIMINATION.....	1
ARTICLE IV. STATE LAW COMPLIANCE.....	1
ARTICLE V. EXISTING BENEFITS CONTINUED .....	2
ARTICLE VI. TERM OF UNDERSTANDING .....	2
ARTICLE VII. TOTAL AGREEMENT .....	2
ARTICLE VIII. VALIDITY OF MEMORANDUM .....	2
ARTICLE IX. CITY RIGHTS .....	2
ARTICLE X. CITY COUNCIL APPROVAL .....	3
<b>CHAPTER 2. SALARIES AND OTHER COMPENSATION.....</b>	<b>3</b>
ARTICLE I. SALARIES.....	3
ARTICLE II. UNIFORM/SAFETY EQUIPMENT ALLOWANCE .....	3
ARTICLE III. ACTING PAY .....	4
ARTICLE IV. MANAGEMENT INCENTIVE PAY .....	4
<b>CHAPTER 3. LEAVES.....</b>	<b>4</b>
ARTICLE I. DEFINITION OF A WORKDAY .....	4
ARTICLE II. GENERAL LEAVE .....	4
ARTICLE III. FLEXIBLE SCHEDULING .....	8
ARTICLE IV. SICK LEAVE BANK .....	8
ARTICLE V. HOLIDAYS - HOLIDAY PAY/TIME OFF .....	8
ARTICLE VI. FAMILY LEAVE .....	10
ARTICLE VII. BEREAVEMENT LEAVE .....	10
ARTICLE VIII. PERSONAL LEAVE DONATION.....	11
<b>CHAPTER 4. INSURANCE.....</b>	<b>12</b>
ARTICLE I. ALTERNATIVE BENEFITS AND COMPENSATION PLAN .....	12
ARTICLE II. LIFE INSURANCE .....	16
ARTICLE III. LONG-TERM DISABILITY INSURANCE .....	17
<b>CHAPTER 5. RETIREMENT.....</b>	<b>17</b>
ARTICLE I. RETIREMENT .....	17

<b>CHAPTER 6. GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURES.....</b>	<b>19</b>
ARTICLE I. GRIEVANCE PROCEDURE.....	19
ARTICLE II. GENERAL .....	20
ARTICLE III: PROCEDURE .....	20
ARTICLE IV: MISCELLANEOUS PROVISIONS.....	22
ARTICLE V: DISCIPLINARY APPEALS .....	23
ARTICLE VI: APPEALS.....	23
ARTICLE VII: EXCLUSIONS .....	24
ARTICLE VIII: GENERAL .....	24
ARTICLE IX: PROCEDURE .....	25
ARTICLE X: MISCELLANEOUS PROVISIONS.....	26
<b>CHAPTER 7. ASSOCIATION ISSUES .....</b>	<b>27</b>
ARTICLE I. ORGANIZATION BUSINESS .....	27
ARTICLE II. MEETING FACILITIES .....	27
<b>CHAPTER 8. MISCELLANEOUS .....</b>	<b>27</b>
ARTICLE I. SUBSTANCE ABUSE POLICY.....	27
ARTICLE II. AMERICANS WITH DISABILITIES ACT .....	28
ARTICLE III. TUITION REIMBURSEMENT.....	28
ARTICLE IV. REAPPOINTMENT .....	28
ARTICLE V. REQUEST FOR CALPERS ACTUARIAL VALUATION .....	29
<b>APPENDIX A: FPMA JOB CLASSIFICATIONS.....</b>	<b>31</b>
<b>INDEX .....</b>	<b>33</b>

MEMORANDUM OF UNDERSTANDING  
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CONDITIONS OF EMPLOYMENT BETWEEN  
CITY OF FREMONT  
AND  
FREMONT POLICE MANAGERS' ASSOCIATION

CHAPTER 1. ADMINISTRATIVE

**ARTICLE I. PARTIES TO UNDERSTANDING**

This Memorandum of Understanding is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as City), and the FREMONT POLICE MANAGERS' ASSOCIATION (hereinafter referred to as the Association or FPMA), pursuant to Government Code 3500, et seq. This Memorandum of Understanding applies to those classes of employment set forth in Appendix "A," attached hereto and made a part hereof.

**ARTICLE II. RECOGNITION**

The City recognizes the Association as the formal bargaining representative for the purposes of establishing wages, hours and other terms and conditions of employment for employees in the classified service who are employed in the classes of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Association and the Municipal Employee Relations Officer (City Manager).

**ARTICLE III. NON-DISCRIMINATION**

The City and the Association agree that each shall not discriminate in any aspect of employment or membership based on political affiliation, race, religious creed, color, national origin, ancestry, sex, marital status, sexual orientation, age (40 and over), medical condition (cancer and genetic characteristics), disability (mental and physical) including HIV and AIDS or any other basis prohibited by law.

**ARTICLE IV. STATE LAW COMPLIANCE**

This Memorandum of Understanding complies with the provisions of Section 3500, et seq., of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer and Employee representatives noted herein did meet and discuss in good faith and did reach agreement on those matters within the scope of representation.

## **ARTICLE V. EXISTING BENEFITS CONTINUED**

Except as provided herein, this Memorandum of Understanding does not modify existing economic benefits contained in the Personnel Resolution (Resolution 688), as amended or Personnel Ordinance. Such economic benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

## **ARTICLE VI. TERM OF UNDERSTANDING**

This Memorandum of Understanding (hereinafter referred to as "Understanding") incorporates all modifications regarding wages, hours, and other terms and conditions of employment. This Understanding shall be effective as of October 1, 2011, and shall terminate June 30, 2013.

## **ARTICLE VII. TOTAL AGREEMENT**

- A. This Understanding sets forth the full and entire understanding of the parties regarding matters set forth herein.
- B. No verbal statement or other addition or modification, except an amendment mutually agreed upon between the parties in writing, approved by the City Council, annexed hereto, and designated as an amendment to this Understanding, shall supersede the provisions herein.
- C. Except as specifically provided herein, it is agreed and understood that each party hereto waives its right, and agrees that the other shall not be required to negotiate with respect to any subject or matter covered herein during the term of this Understanding.
- D. The waiver of any breach, term or condition of this Understanding by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

## **ARTICLE VIII. VALIDITY OF MEMORANDUM**

Should any article, section, or portion thereof of this Understanding be found to be unlawful and/or unenforceable by any court of competent jurisdiction, such decision of the court shall only modify or invalidate the specific article, section, or portion thereof modified or invalidated by the decision, and the remainder of this Understanding shall not be affected thereby, and shall remain in full force and effect throughout the term of this understanding.

## **ARTICLE IX. CITY RIGHTS**

The City reserves, retains and is vested with any management rights not expressly granted to the Association by this Agreement, the Personnel Rules or the Employer-Employee Relations Ordinance or Administrative Regulations. These City rights include but are not limited to the right to:

- A. Determine and modify the organization of City government and its constituent work units.

- B. Determine the nature, standard, levels and mode of delivery of City services.
- C. Determine the methods, means, number and kind of personnel by which services are provided.
- D. Impose discipline subject to applicable law and the provisions of this Understanding.
- E. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules.
- F. Adjust, solely at the discretion of the City Manager and notwithstanding any other provision of this Understanding, the salary schedule, leave, and other compensation and/or benefits to recognize superior individual performance or for positions for which it is difficult to recruit and/or retain suitable employees.

## **ARTICLE X. CITY COUNCIL APPROVAL**

It is the mutual understanding of the parties hereto that this Memorandum of Understanding is of no force or effect until approved by the City Council of the City of Fremont.

## **CHAPTER 2. SALARIES AND OTHER COMPENSATION**

### **ARTICLE I. SALARIES**

During the term of this Understanding, there shall be no modifications to salaries in effect on September 30, 2011.

### **ARTICLE II. UNIFORM/SAFETY EQUIPMENT ALLOWANCE**

Police Safety Management employees shall receive a uniform allowance of \$1,500.00 per year, one-half amount (\$750.00), to be paid twice yearly. Payments of \$750.00 shall be made on the first paycheck in January and the first paycheck in July for the preceding six-month period.

Employees who leave City employment for any reason or who are no longer covered by this agreement shall not be eligible for nor be paid the uniform allowance for any part of the six (6) month period (i.e., January through June, or July through December) after which departure from the City occurs.

An employee newly appointed to a position that is eligible to receive Uniform/Safety Equipment Allowance pursuant to this Article, shall be eligible for and shall be paid a portion of the allowance on a pro-rata basis for that part of the six (6) month period (i.e. January through June, or July through December) that occurs after his/her date of appointment.

### **ARTICLE III. ACTING PAY**

A FPMA employee specifically assigned in writing by the Police Chief, or his/her designated representative, on a temporary basis to a position in a higher classification, and who, pursuant to such assignment, performs the preponderance of duties of that position on a day to day basis may seek additional compensation for such assignment.

#### Process

1. The process to initiate Acting Pay shall be pursuant to procedures in the Police Department. A request for Acting Pay may be initiated by either the employee or the supervisor.
2. The Personnel Action form, along with the memo, will be forwarded to the Human Resources Director for final processing.
3. The Human Resources Director shall review the request for appropriateness and consistency of application across the organization, both in terms of duration and level of compensation. The Human Resources Director may approve or deny the request, at his/her discretion.

### **ARTICLE IV. MANAGEMENT INCENTIVE PAY**

A FPMA represented employee who, due to the unique nature of his/her job, is assigned by a Department Head to perform work outside the scope of his/her normal duties, may receive Management Incentive Pay at the exclusive discretion of the City Manager or his/her designee.

## **CHAPTER 3. LEAVES**

### **ARTICLE I. DEFINITION OF A WORKDAY**

For the purpose of accrual or use of leave time, a day/workday is defined as the number of hours equivalent to 0.3846% of the total number of duty hours in the normal duty year (before deducting time off for vacation and holidays) of the employee involved.

### **ARTICLE II. GENERAL LEAVE**

This General Leave Plan replaces all General Leave Plans in effect prior to July 1, 1999. Effective July 1, 1999, the General Leave Plan will be administered as follows:

- A. General Leave may be used for any leave purpose, but its use shall be governed by the current Personnel Rules and any amendments thereto dealing with leaves. There shall be two (2) categories of General Leave:
  1. Scheduled Leave: Any leave that can be reasonably forecast or anticipated, i.e., vacation leave, scheduled medical/dental appointments, "extended weekends", "personal" leave, etc., shall require prior approval of the employee's supervisor.

2. **Unscheduled Leave:** Any leave that is genuinely of an unanticipated nature, i.e., "sick leave", emergency leave. Inappropriate use of unscheduled leave may be grounds for corrective action in accordance with current practice.

B. The General Leave Plan shall be in lieu of vacation hours, sick leave hours, emergency hours, and management leave hours.

C. An employee must use all accrued General Leave before a request for leave of absence without pay will be granted, except upon approval of the City Manager.

#### D. DEFINITIONS

For the purposes of this Article, the following terms have the meanings stated below:

1. OLD GENERAL LEAVE BANK shall mean all General Leave held for the benefit of the individual employee represented by the Association as of December 1, 1992.
2. NEW GENERAL LEAVE BANK shall mean all General Leave accrued by the individual employee represented by the Association on or after December 1, 1992.
3. AGGREGATE GENERAL LEAVE BANK shall mean the total number of Old General Leave Hours plus New General Leave Hours.
4. AGGREGATE GENERAL LEAVE ACCRUAL LIMIT shall mean a maximum accrual of General Leave time held for the benefit of an employee as described in Section E, below, plus the number of Old General Leave hours.
5. SICK LEAVE BANK shall mean leave with pay hours available to employees which may be used for personal illness or illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee.
6. SABBATICAL/SICK LEAVE BANK shall mean a bank of leave with pay available to all eligible employees. This bank may be used for personal illnesses or may be used for SABBATICAL LEAVE as described in Section G, below. The maximum accrual of the SABBATICAL/SICK LEAVE BANK is 1040 hours, and hours are deposited into the SABBATICAL/SICK LEAVE BANK pursuant to the requirements of Section G.
7. ACCRUABLE LEAVE hours refers to General Leave hours earned as outlined in Section E.
8. NON-ACCRUABLE LEAVE hours refers to General Leave hours credited to employees on the payday for the biweekly pay period that includes July 1 of each year. Non-Accruable General Leave hours are not available for cash out at any time and are not available for carryover from one fiscal year to the next. At the beginning of the fiscal year, hours are replenished.

9. FLOATING HOLIDAY hours refers to hours credited to employees each year as described in Chapter 3, Article V. FLOATING HOLIDAY hours will be added to the Holiday Time Bank each year and are available for cash out as described in Chapter 3, Article V.

#### E. GENERAL LEAVE ACCRUAL

Effective July 1, 2001, all eligible employees shall earn Accruable and Non-Accruable General Leave for continuous service based on the following schedule:

Yrs. of Service	Accruable Leave		Non-Accruable Leave	Total	Max Limit on Accruable Leave
	Per Year	Per Pay Period			
0-5	108 hours	4.154 hrs	80 hours	188 hrs	315 hours
6-10	132 hours	5.077 hrs	80 hours	212 hrs	351 hours
11-15	132 hours	5.077 hrs	104 hours	236 hrs	387 hours
16-24	156 hours	6.000 hrs	104 hours	260 hrs	423 hours
24+	156 hours	6.000 hrs	56 hours	212 hrs	423 hours

Accruable and Non-Accruable General Leave may be combined for time off in a single day.

Any hours of Non-Accruable General Leave used will be replenished at the beginning of the biweekly pay period that includes July 1 each year, up to the maximum allowable hours based on years of continuous service. Non-Accruable General Leave hours are not available for liquidation at any time or for payoff at termination.

The employee shall have the discretion to identify whether the leave to be used is Non-Accruable or Accruable General Leave. If the employee does not designate the type of leave to be used, the City shall draw down Non-Accruable General Leave before drawing down Accruable General Leave.

For employees with 0-5 years of service with the City, the City Manager may, at his/her sole discretion, credit non-City work experience to the employee's years of service for purposes of leave accrual rates. Such credit shall not apply for any other purpose.

#### F. UTILIZATION OF "OLD GENERAL LEAVE" BANK

1. General Leave held for the benefit of an employee on or before November 30, 1992 will be maintained in a separate "Old General Leave" bank. Old General Leave, once drawn down, can only be replenished for the purpose of liquidation upon termination, as described in paragraph G below.
2. The City will draw down accruable and Old General Leave based on the "Last In First Out" method.

## G. LIQUIDATION OF LEAVE

### 1. CURRENT EMPLOYEES

Employees who have a general leave balance of at least 75% of their maximum accruable leave at the end of the first pay period that ends in the preceding May will have the option to make a once a year, irrevocable election to liquidate leave. Leave may be liquidated in one-hour increments up to the annual maximum liquidation limit. The applicable maximum liquidation limit will be based on the employee's years of service as of the end of the first pay period in May. This leave liquidation will be paid out in a lump sum on the first scheduled payday in the following August.

Years of Service	Maximum Accruable Leave	75% Qualifying Balance	Maximum Liquidation Limit
0-5	315 hours	236	60 hours
6-10	351 hours	263	60 hours
11-15	387 hours	290	80 hours
16+	423 hours	317	80 hours

### 2. SABBATICAL/SICK LEAVE BANK

Any Accruable General Leave hours accrued above the maximum aggregate general leave limit shall be placed into a SABBATICAL/SICK LEAVE BANK.

The SABBATICAL/SICK LEAVE BANK is a bank having a maximum accrual of 1040 hours. These hours may be used by eligible employees for sick leave absences or, with City Manager approval, for a SABBATICAL having a duration of not less than 520 hours. Employees will not be eligible to use SABBATICAL time until having reached 5 years of continuous service. SABBATICALS shall only be available once every seven (7) years and are granted subject to City Manager discretion and approval.

### 3. AT TERMINATION OF EMPLOYMENT

The number of hours of Aggregate General leave equivalent to the number of Old General Leave Bank hours accrued while represented by the Association or other City of Fremont recognized employee organizations and held for the benefit of an employee on November 30, 1992, shall be liquidated at termination at an hourly rate based on the following formula:

monthly base pay plus 43.183% of monthly base pay  
multiplied by twelve months, divided by the number of  
hours worked in a year (2080 for 40 hour/week  
employees)

All remaining New General Leave Bank hours earned on or after December 1, 1992 shall be liquidated at termination only, except as provided in Section G., above, and at the hourly base rate in effect at termination.

### **ARTICLE III. FLEXIBLE SCHEDULING**

- A. FLEXIBLE SCHEDULING is a means of recognizing extra hours worked beyond those normally scheduled. Accordingly, employees may adjust their work schedules with appropriate notice and coordination with their manager. Although employees may use FLEXIBLE SCHEDULING for partial day absences, employees may use General Leave for such partial day absences as well.
- B. All employees covered by this MOU who have been designated exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) may, with prior approval, use FLEXIBLE SCHEDULING for absences of less than a regular work day.

### **ARTICLE IV. SICK LEAVE BANK**

- A. Sick leave may be used for personal illness or illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee. The employee's immediate family is defined as wife, husband, child, brother, sister, parent, parent-in-law, grandparents, and grandparents-in-law, except that a relative or life partner residing in the same household may, for the purpose of this section, be considered as a member of the immediate family. A life partner is an individual who is in an established, long-term committed relationship (minimum of six (6) months) with an employee.
- B. Sick leave, either with pay or without pay, shall not be allowed for any absence resulting from illness or injury arising out of and in the course of employment by the City of Fremont. If sick leave is awarded in error, the City shall be entitled to recover the amount of salary paid on account thereof. Such sick leave shall then be restored to the account of the employee upon recovery by the City of the total amount paid.
- C. The employee shall have the discretion to identify whether the leave to be used is Old Sick Leave or SABBATICAL/SICK LEAVE. If the employee does not identify what type of leave is to be used, the City shall draw down SABBATICAL/SICK LEAVE before drawing down Old Sick Leave.
- D. Accrued time in the sick leave bank shall not be compensated for in any manner and may only be used for leave purposes permitted by Chapter 3, Article IV A of this MOU.

### **ARTICLE V. HOLIDAYS - HOLIDAY PAY/TIME OFF**

- A. The following days are designated as holidays:
  - 1. January 1.
  - 2. The third Monday in January, known as "Martin Luther King Jr. Day".
  - 3. The third Monday in February, known as "Presidents' Day".
  - 4. The last Monday in May, known as "Memorial Day".
  - 5. July 4.
  - 6. The first Monday in September, known as "Labor Day".
  - 7. November 11, known as "Veterans' Day".
  - 8. The Thursday in November appointed as "Thanksgiving Day".

9. The day following "Thanksgiving Day".
  10. December 24.
  11. December 25.
  12. December 31.
  13. Every other day appointed by the President or Governor and authorized by the City Manager, or designated by the City Council for a public fast, Thanksgiving or holiday.
- B. The days upon which holidays are observed shall be as provided in Article XII of Resolution No. 688, as amended. Notwithstanding the foregoing, holidays proclaimed or appointed and authorized as provided under subsection A.13. shall be observed only upon the day so proclaimed or appointed.
- C. All employees who are covered by this MOU shall continue to receive eight (8) hours, of their current base pay, for each of the holidays listed above, regardless of their assigned schedule.
- D. To be eligible for holiday pay, an employee must be in a paid status on the regularly scheduled work day before and after the designated holiday.
- E. Holiday hours shall be prorated for employees that work a modified/part-time schedule.
- F. HOLIDAY TIME BANK/PAY
1. Effective after the adoption of this Memorandum of Understanding, each second pay day in June, full-time FPMA employees shall elect whether they want to receive holiday time in biweekly payments (4.0 hours biweekly) or have 104 hours credited to a Holiday Bank. The employee's holiday option shall remain in effect until changed by the employee at the next election period.
- Employees electing biweekly payments will be paid 4.0 holiday hours on each biweekly paycheck. Employees electing biweekly holiday payments and who receive department approval to take a holiday off, must use comp or vacation time for such holiday.
- Employees electing a Holiday Bank will receive 104 holiday bank hours. These hours shall be available for use on City-recognized holidays. The accrual period begins each November 16 and runs through the following November 15. Holiday Bank hours are posted on the first payday in December each year. There shall be no carry-over of unused holiday bank hours from one accrual period to the next. Any unused hours shall be paid at the employee's straight time hourly rate of pay on the first payday in December.
2. The department retains the right to determine that certain employees not needed for service responsibilities shall take holidays off as they occur. Employees who request or are designated to take a holiday off and the department approves the time off on the actual holiday, will have holiday hours deducted from the balance of any accumulated leave banks except the employee's sick leave bank.

3. Any employee hired after November 16 (the beginning of the accrual period) and who elects a Holiday Bank, shall be credited with the number of holidays (as listed in Chapter 3, Article V) occurring between the employee's first day of employment and next November 15 (the end of the accrual period).
4. Any employee who separates employment and who has elected a Holiday Bank, shall be entitled to the number of holiday hours equal to the number of unused holidays (as listed in Chapter 3, Article V) occurring between November 16 (the beginning of the accrual period) and the employee's last day of employment. Any unused holiday bank hours shall be paid at the employee's straight time hourly rate of pay. If the employee has taken more hours of holiday than provided in this section, the employee will be required to repay the City for all hours taken in excess of the number of entitled hours. The amount of repayment required shall be deducted from the employee's final paycheck. Payment may be made through an adjustment to any leave bank except the sick leave bank.
5. Any holiday occurring as provided in Section A.13 of this Article shall not be included in said holiday bank time but shall be liquidated at the employee's straight time hourly rate of pay.
6. Any employee on a leave without pay when a holiday occurs shall either have his/her holiday bank hours reduced by eight (8) hours for each holiday or shall not be paid for 4.0 hours of holiday pay, depending on how the employee has elected to receive holiday time.

## **ARTICLE VI. FAMILY LEAVE**

It is the City's intent to comply fully with the requirements the California Family Rights Act (CFRA), the federal Family and Medical Leave Act (FMLA), California requirements regarding pregnancy disability leave (PDL), the City of Fremont Personnel Rules (PR) regarding Leave Without Pay (LWOP), and the General Leave (GL) Plan.

## **ARTICLE VII. BEREAVEMENT LEAVE**

In the case of a death in the immediate family, an employee may be granted Bereavement Leave with pay for a period of three (3) work days falling during the period from the time of death until one day following the day of the funeral. Such Bereavement Leave will not be charged against any general leave (accruable or non-accruable) or sick leave bank.

"Immediate family" shall include the child, stepchild, foster child, brother, sister, parent, grandparent, and current spouse of the employee, the parent and grandparent of the current spouse of the employee, and any person who at the time of his/her death was related to and resided in the same household as the employee. A life partner residing in the same household as the employee who is not a legal spouse may be considered by the employee as a member of the immediate family.

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**ARTICLE VIII. PERSONAL LEAVE DONATION**

In the event of a medical, personal or family emergency, employees covered under this Understanding may donate or receive accrued leave accruals to or from other City of Fremont employees. Donations and use of donated leave time shall be administered through a Personal Emergency Time (PET) Bank, provided as follows:

- A. For purposes of this article, “medical, personal, or family emergency” shall mean circumstances in which an employee needs to take time off from, or reduce, their regular work schedule as the result of the illness or injury of themselves or illness or injury of a family member which requires their care. “Family member” shall be defined as: 1) a biological, adopted, or foster child, a step child, a legal ward under 18 years of age, and an adult dependent child over 18 years of age; 2) a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who stood in place of a parent to the employee; 3) a spouse as defined or recognized under State law for purposes of marriage in the State of California; or 4) another relative residing in and a member of the same household or a life partner residing in the same household who is not a legal spouse.
- B. FPMA unit members may donate only accrued general leave and future, general leave. Neither sick leave nor non-accruable general leave time may be donated.
- C. The recipient employee will not accrue seniority during any period of donated leave usage. However, benefits provided pursuant to Chapter 4. Insurance, of this MOU, including any deductions authorized by the recipient employee, shall continue during any period of donated leave usage.
- D. In order to receive donated time from the PET Bank, an employee must first exhaust all general leave, both accruable and non-accruable, and sick leave banks, as applicable to the recipient employee.
- E. The point at which an employee may request use of the PET Bank shall be when all applicable leaves have been used down to an aggregate total of forty-five (45) hours and the employee anticipates that he/she will use all existing aggregate hours during the next pay period, because of the need to be absent from work more than forty-five (45) hours.
- F. The recipient employee will be responsible for payment of taxes due on the salary received when the leave is used.
- G. The donating employee cannot donate future leave accruals in excess of his/her leave accrual rate per pay period at the time of donation.
- H. The donating employee cannot donate accrued leave in excess of his/her existing general leave balance.
- I. The City Manager will determine whether or not a leave of absence will be approved for the recipient employee. The City will comply with Federal and State laws and City Ordinances at all times and their guidelines will generally provide direction for evaluating leave requests.

- J. Neither the City nor the Association shall discriminate in any way with respect to the donation of accrued leave or future leave accruals based on race, religious creed, political affiliation, color, national origin, ancestry, sex, marital status, age (40 and over), sexual orientation, medical condition (cancer and genetic characteristics), or disability (physical or mental) including HIV and AIDS.
- K. In instances when the receiving employee does not use all donated hours, the hours not used will, at the donating employee's election, remain in the general, City wide PET Bank to be disbursed at the discretion of the Human Resources Director or returned to the donating parties.
- L. A donating employee may designate a specific recipient to receive donated hours.
- M. FPMA unit members may give or receive hours across bargaining unit lines consistent with reciprocating agreements with other City of Fremont bargaining units.
- N. The Human Resources Director will administer this PET Bank and will report to all bargaining units on its use after one year.

## CHAPTER 4. INSURANCE

### **ARTICLE I. ALTERNATIVE BENEFITS AND COMPENSATION PLAN**

#### **A. DEFINITIONS**

- 1. The City shall secure and make available to all eligible employees, medical care, dental care, accidental death and dismemberment, child care reimbursement and excess medical expense reimbursement under the Alternative Benefits and Compensation Plan (ABC Plan). The ABC Plan is a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code.
- 2. The City contribution for insurance and other benefit coverage available under the ABC Plan is known as the Health Benefits Allowance (HBA).

#### **B. HEALTH BENEFITS ALLOWANCE CITY CONTRIBUTION**

- 1. Effective January 1, 2011, the Health Benefits Allowance shall increase to \$1,670.13 per month.

The Health Benefits Allowance shall be \$1,670.13 per month during the term of the MOU.

- 2. In the event health premiums and/or costs for the selected benefits exceed the amount of the HBA, the balance will be paid by the employee through automatic pre-tax payroll deduction, as provided by IRC Section 125.

Money not used for the purchase of benefits under the plan will be paid to the employee in taxable compensation subject to the following limits.

**Employees Hired as of January 1, 2008**

Effective January 1, 2009, employees who waive medical and dental coverage in accordance with the provisions established by the City and do not purchase medical and dental benefits under the ABC Plan will be eligible to receive a maximum of \$780 per month in taxable compensation in-lieu of purchasing medical benefits. If the difference between the HBA and the amount not used for the purchase of medical/dental benefits is \$580 or more and less than \$780, the employee shall be eligible to receive a maximum of \$580 per month in taxable compensation. If the difference between the HBA and the amount not used for the purchase of medical/dental benefits is less than \$580, the employee shall be eligible to receive the amount not used for the purchase of medical/dental benefits per month in taxable compensation.

**Employees Hired after January 1, 2008**

Employees hired on or after January 1, 2008 who waive medical/dental coverage or who purchase medical/dental benefits under the ABC Plan shall be eligible to receive up to a maximum of \$580 per month in taxable compensation for money not used for the purchase of medical/dental benefits under the Plan.

Effective June 30, 2013, the maximum taxable cash payable in-lieu of benefits shall be \$580 for all members of the FPMA.

3. The City contribution as established above shall be the maximum amount required, and the City shall not be responsible for contribution of any sum in addition to that established by the terms of this Understanding.

**C. DESCRIPTION OF PLANS**

1. Except as provided in Section C.2. below, the coverage, exclusions, and limitations of the City sponsored plans are those in force on July 1, 1996, for the purpose of description of said plans. As provided under the Public Employees' Medical and Hospital Care Act (PEMHCA), medical care benefits are provided through the Public Employees' Retirement System (PERS) medical plan, subject to such changes as may be made by the PERS Health Benefits Division in its role as administrator of said health plans.
2. Effective as provided herein, employees who elect coverage under PEMHCA may also elect coverage for a domestic partner to the extent permitted by and according to the procedures of PEMHCA Section 22873. This provision shall become effective on the first day of the month following the month in which the City files with PERS a certified copy of the City's resolution electing such coverage.

- D. In the event the Federal government implements a nation-wide health care plan that mandates changes to the health and welfare programs described in this Memorandum of Understanding, the City and the Association agree to meet in a timely manner to discuss the impact.

#### E. DENTAL INSURANCE

A dental insurance plan will be available for all employees and their eligible dependents. Annual maximum dental coverage per calendar year is \$2000 per covered individual. Orthodontic maximum coverage per calendar year is \$1500 per covered individual.

To the extent the plan continues to be offered by Delta Dental, employees will continue to be covered by the same dental plan design after January 1, 2011. If the same plan is no longer offered by Delta Dental, the City and the Association will meet and confer and reach agreement on the new plan design.

#### F. VISION INSURANCE

A vision insurance plan will be available for all employees and their eligible dependents. The plan will provide benefits which include an eye examination every year and lenses and frames every two (2) years. The plan will include a ten dollar (\$10) deductible for all services. An employee may elect to enroll him/herself and any eligible dependents in the plan during the annual enrollment period. Enrollment and benefits will be subject to the conditions as provided by the plan.

#### G. RETIREE MEDICAL PREMIUM REIMBURSEMENT

1. Members who retired prior to July 1, 1999 will continue to receive the benefit amount in effect June 30, 1999.
2. Effective July 1, 1999, the City will reimburse employees retiring on or after that date up to \$200.00 per month toward the medical premium paid by said employee, with the following adjustments:
  - i) employees retiring with more than 10 years and less than 20 years of service with the City will receive an additional \$25 per month toward the medical premium paid by the employee, for a total of \$225.00 per month;
  - ii) employees retiring with more than 20 years and less than 30 years of service with the City will receive an additional \$50 per month toward the medical premium paid by the employee, for a total of \$250.00 per month;
  - iii) employees retiring with more than 30 years of service with the City will receive an additional \$75 per month toward the medical premium paid by the employee, for a total of \$275.00 per month.

Employee Years of Service at Retirement	City Base Contribution	Adjustment for Years of Service (\$/mo.)	Total City Contribution (\$/mo.)
Less than 10	\$200	\$0	\$200
10 to 19	\$200	\$25	\$225
20 to 30	\$200	\$50	\$250
More than 30	\$200	\$75	\$275

3. Effective July 1, 2002, employees retiring from the City of Fremont on or after July 1, 2001 with 20 or more years of service at the date of retirement will be entitled to receive for reimbursement of retiree medical insurance premiums, an amount equal to the greater of the amount described in Section G.2., above, or the Kaiser premium for single-party coverage in effect on January 1, 2002 or the date of the employee's retirement, whichever is later.
4. Effective July 1, 2003, employees retiring from the City of Fremont on or after July 1, 2001 with 25 or more years of service at the date of retirement will be entitled to receive for reimbursement of retiree medical insurance premiums an amount equal to the greater of the amount described in Section G.2., above, or the Kaiser premium for two-party coverage in effect on January 1, 2003 or the date of the employee's retirement, whichever is later.
5. A. An employee who is hired on or after July 1, 2007 is eligible for retiree medical premium reimbursement set forth in 5.B below provided he/she meets the following criteria:
  1. Retires from the City of Fremont within 120 days of separation;
  2. Is vested with CalPERS;
  3. Has completed at least five (5) years of continuous service with the City; and
  4. Is at least age 50 or has received a CalPERS industrial disability retirement as a result of employment with the City of Fremont.
- B. The actual amount of medical premium reimbursement the City will contribute to eligible employees will be based on the employee's total years of City service as provided in the following chart.

Employee Years of Service at Retirement	City Base Contribution (\$/mo.)	Adjustment for Years of Service (\$/mo.)	Total City Contribution (\$/mo.)
0 to 5	\$0	\$0	\$0
6 to 9	\$200	\$0	\$200
10 to 19	\$200	\$25	\$225
20 to 24	\$200	\$0	Kaiser single party premium in effect at date of retirement
25 or more	\$200	\$0	Kaiser two-party premium in effect at date of retirement

6. The amount of City reimbursement shall not exceed the premium required for the retiree's particular level of coverage in the plan selected. Retirees must comply with the processes and procedures established by the City for verification of enrollment, cost of plan and other required information to maintain their eligibility for reimbursement.
7. The retiree medical reimbursement amounts described in Sections 1, 2, 3, 4 and 5 above shall be reduced by the CalPERS-required employer portion of the premium if the retiree purchases insurance through the CalPERS plan.
8. For purposes of evaluating eligibility for this benefit, credit will be given, upon submission of proof by the employee to the satisfaction of the Human Resources Director, for up to 10 years of service with other public agencies. "Other public agencies" shall mean state, local, or federal government (including full-time active military duty), special districts, and public school, college or university service.
9. It is further understood that should the Association elect to continue medical insurance premium coverage for eligible retired employees, any cost increases occurring and projected at the time of negotiation of a new Understanding shall be considered a cost to the new agreement.
  - A. An employee who is hired on or after January 1, 2012, is eligible for retiree medical premium reimbursement set forth in 10.B below provided that he/she meets the following criteria:
    1. Retires from the City of Fremont within 120 days of separation;
    2. Is vested with CalPERS;
    3. Has completed at least five (5) years of continuous service with the City; and
    4. Is at least age 50 or has received a CalPERS industrial disability retirement as a result of employment with the City of Fremont.
  - B. The actual amount of medical premium reimbursement the City will contribute to eligible employees will be based on the employee's total years of City service as provided in the following chart.

Employee Years of Service at Retirement	Monthly City Reimbursement Amount
0 to 5	\$0
6 to 24	\$10 per month per Year of Service
25 or more	\$500

## ARTICLE II. LIFE INSURANCE

All Association employees employed in the classes of positions set forth in Appendix "A" of this Understanding shall be provided One Hundred Thousand Dollars (\$100,000) of group life insurance under a program to be selected and administered by the City. The employee may choose to provide life insurance coverage to eligible dependents.

**ARTICLE III. LONG-TERM DISABILITY INSURANCE****A. MANDATORY INSURANCE PURCHASE**

The long-term disability premium will be paid by the employee as an after-tax deduction on a biweekly basis. The City will credit the employee with the premium cost of the Long Term Disability Policy.

**B. SHORT TERM DISABILITY INSURANCE**

The City will offer a voluntary short term disability policy to employees in the FPMA bargaining unit to be paid by the employee.

Minimum long-term disability insurance coverage will be calculated based on the employee's monthly salary or Fifteen Thousand Dollars (\$15,000), whichever is less. The benefit is calculated as 66-2/3% of the employee's monthly salary to a maximum benefit of Ten Thousand Dollars (\$10,000) per month.

The Long Term Disability coverage waiting period is six (6) months and for employees covered by this Memorandum of Understanding and the benefit will be calculated at 66-2/3% of the employee's monthly salary up to a maximum of Ten Thousand Dollars (\$10,000) per month.

**C. MID-CONTRACT DISCUSSIONS**

The parties agree to meet and discuss mid-contract to consider alternatives to the City's long term disability plan, such as a CLEA or PORAC sponsored plan.

**CHAPTER 5. RETIREMENT****ARTICLE I. RETIREMENT****A. EMPLOYEES HIRED BEFORE JANUARY 1, 2012 – TIER 1**

1. The City agrees to continue its contract with PERS for the following retirement benefits:
  - a. Military service credit, as specified in Section 21024 of the Government Code with the eligible employee required to contribute both the employer's and the employee's contributions and interest.
  - b. "One Year Highest Compensation" (Section 20042 of the Government Code) retirement benefit.
  - c. "Credit for Unused Sick Leave" (Section 20965 of the Government Code) retirement benefit.

- d. The “Increased” and the “Third” levels to the existing ’59 Survivor Benefit program in accordance with Sections 21572 and 21573 of the Government Code.
- e. The continuation of the Post-survivor allowance after remarriage in accordance with Section 21551 of the State Government Code.
- f. The 3% at Age 50 (Sections 21362.2 of the Government Code) retirement benefit formula.

**B. EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2012 – TIER 2**

- 1. The City shall contract with CalPERS to create a second tier retirement system applicable to employees hired on or after January 1, 2012, and subject to CalPERS requirements. The program shall contain the following features:
  - a. The 3% at 55 retirement benefit formula;
  - b. Final salary for pension purposes shall be based on the average of the employee’s highest salary of three consecutive years.
  - c. Military service credit, as specified in Section 21024 of the Government Code with the eligible employee required to contribute both the employer’s and the employee’s contributions and interest.
  - d. The continuation of the Post-survivor allowance after remarriage in accordance with Section 21551 of the State Government Code.
- C. During the term of this Agreement, FPMA employees will contribute 6.43% of the employer’s CalPERS required contribution pursuant to California Government Code Section 20516. On June 30, 2013, the amount contributed by FPMA employees towards the employer’s CalPERS required contribution shall be reduced to 5.8%.
- D. FPMA and the City jointly acknowledge that Government Code Section 20630 defines compensation for the application of the Public Employees’ Retirement Law (Government Code Section 20000 et seq.), and that the Board of Administration is expressly granted the authority to determine what constitutes compensation. FPMA hereby expressly acknowledges that the City neither represents nor guarantees that items reported in this Article as compensation will be included in the calculation of retirement benefits, nor do the parties warrant in any manner nor assume any liability for a determination by PERS or any court or adjudicatory body that an item is not compensation for the purpose of calculating retirement benefits under the California Public Employees’ Retirement Act.

FPMA recognizes that PERS may exclude as compensation the conversions provided for in this agreement in its calculation of retirement benefits. FPMA acknowledges and agrees that such exclusion by PERS or any court or adjudicatory body shall neither require the City to meet and confer nor negotiate the impacts of such exclusions, nor shall it create a right or remedy against the City based on such exclusions.

## CHAPTER 6. GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURES

**ARTICLE I. GRIEVANCE PROCEDURE**

The Association and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any Appeal available to an employee covered by the provisions of this Memorandum of Understanding shall be by arbitration. In agreeing to this method of resolving Appeals, both parties understand and agree that the City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of the arbitrators made pursuant to this procedure.

**A. THE PURPOSE OF THIS PROCEDURE SHALL BE:**

1. To establish orderly procedures providing a method of communication between employees and management concerning matters which may be subject to grievance.
2. To provide that the grievance procedure shall be as informal as possible.
3. To provide that grievances shall be settled as promptly as possible and at the lowest possible level of the procedure.
4. To provide employees, individually or with a representative of their own choosing, and/or the Association, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure. Provided, however, that no individual shall be accorded any relief through the grievance/appeal procedure as to any prior action of any kind whatsoever directed specifically at his or her individual employment status unless he or she shall prosecute such a proceeding as a named party—whether or not joined with other parties.

**B. MATTERS SUBJECT TO GRIEVANCE PROCEDURE**

1. Grievances: For the purpose of this procedure, a “Grievance” shall be defined as any complaint or dispute concerning the interpretation or application of any ordinance, or any rule or regulation of the City or the Department governing personnel practices or working conditions, or the practical consequences of a City’s rights, decision on wages, hours, and other terms and conditions of employment, or the interpretation or application of any of the provisions of the Memorandum of Understanding.
2. Exclusions: The procedures set forth herein shall not apply in matters where other methods of dispute resolution have been specifically provided for in State or Federal law, such as, but not limited to, appeals of worker’s compensation claims; claims made pursuant to the Fair Labor Standards Act (FLSA); unemployment insurance claims; or claims of employment discrimination based upon race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status for which a remedy is provided by the California Fair

Employment and Practices Act (Cal. Gov. Code Sec. 12900 et seq.), or Title VII (42 United States Code 2000e et seq.), except in cases where an employee contends his/her employment has been terminated in violation of said Acts or the City's existing policies against such discrimination.

## **ARTICLE II. GENERAL**

- A. Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
- B. The time limitations established herein may be extended by mutual consent for valid reasons, such as legitimate absence of one or more parties or because of injury, illness, official obligations, or unavoidable personal obligations.
- C. If the question of arbitrability of an issue is raised by either the employee, the Association, or the City, such questions shall be determined in the first instance by the arbitrator who shall, upon request of any party, make his/her determination prior to hearing the merits of the case.
- D. If joined by the affected employee(s), the Association may initiate a grievance when the issue in dispute affects a member or members of the representation unit. Grievances initiated by the Association on behalf of an employee(s) must deal with the specific action(s) on which the grievance is based. Association initiated grievances shall be first submitted at the second step of the process and then proceed from that step if necessary.

## **ARTICLE III: PROCEDURE**

- A. Informal Discussion: The affected employee, group of affected employees, or the Association may present a grievance orally to the immediate supervisor within ten (10) working days of the occurrence of the issue grieved or within ten (10) working days from such time as the employee or Association should reasonably have been aware of the occurrence.
- B. Formal Submission: Should the grievance remain unresolved within ten (10) days after oral presentation pursuant to Step 1, the employee or Association representative may submit the grievance in writing to the immediate supervisor within ten (10) additional working days. The written grievance shall make specific reference to the statute, ordinance, rule, regulation, or Memorandum of Understanding provision alleged to be controlling, and to the proposed solution. The supervisor shall render a decision in writing to the employee and/or Association representative within ten (10) working days after the formal submission of the grievance.
- C. Appeal to Department Head: Should the grievance remain unresolved, the employee or Association representative may, within ten (10) working days after receipt of the supervisor's decision, submit the grievance in writing to the Department Head. The Department Head or Chief or his/ her designated representative shall respond to the grievance/appeal in writing within (10) working days after its receipt.

- D. City Manager – Association Staff Representative: Should the grievance remain unresolved, the employee or Association representative may, within ten (10) working days after receipt of the Department Head's written response, submit the grievance in writing to the City Manager or his/her designee. The City Manager or his/her designated representative, shall meet as she/he deems appropriate, with the affected employee and with the assigned Association staff representative within twenty (20) working days of submission and attempt to resolve the dispute.
- E. Alternative Grievance – Appeal Resolution: Any other dispute resolving mechanism may be substituted for the foregoing upon mutual agreement between the parties prior to invoking the arbitration provisions of this article. Should the decision appealed from, or the grievance arise from a decision of the City Manager, the steps described in Chapter 6, Article III.A–D, above, may be omitted by the employee(s), who may invoke arbitration pursuant to sub-paragraph F, below.
1. Facilitated Mediation: Prior to submission of a grievance or appeal to arbitration, the parties may submit the grievance or appeal to non-binding interest-based facilitated mediation. The purpose of this mediation is to allow each party to present facts regarding the dispute and/or the process leading up to the submission and ask questions of the opposing party. The parties may also call witnesses and introduce evidence during the mediation.

Both parties must agree to use Facilitated Mediation, and must jointly select a mediator. If the parties cannot agree on a mediator, the provisions of Chapter 6, Article III.F, below, shall be followed for such selection. Both parties shall share all costs including the mediator's fees. No recording devices or court reporters shall be used during the facilitated mediation, and no formal transcripts will be prepared. Flip chart notes may be retained and/or transcribed.

The parties may not use any information presented and statements made at the mediation as evidence in any subsequent proceedings, and the mediator cannot be called as a witness in any subsequent proceedings. Although the parties are encouraged to participate in the facilitated interest-based mediation without the assistance of counsel, attorneys are not prohibited. If any party will be represented by an attorney during the mediation, a minimum of ten days notice must be given to the other party.

Any statements by any party or witness shall not form the basis for an Internal Affairs investigation unless such statement or evidence indicates a criminal act has occurred or an offense has occurred which could result in the termination of an employee.

- F. Arbitration Process: Should the grievance not be resolved to the satisfaction of either the Association or the City by Steps 1-5, either may request arbitration as the final step in the grievance process by notifying the other party of their intent to utilize the services of an arbitrator. Such notice shall be in writing and shall be provided to the other party within ten (10) working days from the date of the decision rendered under sub-paragraph 4 or 5 supra.

Upon notice of intent to arbitrate, the affected employee and the Association and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, a list of five available arbitrators shall be obtained from the State California Department of Industrial Relations or, if by mutual consent, from the American Arbitration Association. Any Party may require that all arbitrators on the list shall be attorneys. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the affected employee and/or the Association and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

- G. Decision of the Arbitrator: The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Memorandum of Understanding and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto.

#### **ARTICLE IV: MISCELLANEOUS PROVISIONS**

- A. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- B. Concurrent grievances alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- C. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena. On noticed application by the City, the arbitrator may order the Association to reimburse the City for its costs incurred in paying any City employee for time spent responding to a subpoena issued at the request of the Association or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.
- D. The Association and the City agree to share equally all costs of arbitration (including, but not limited to, the arbitrator's fees and costs, the cost of court reporters, etc.), but shall be responsible for their own respective costs of making their presentation to the arbitrator, including, but not limited to, their own attorney's fees, expert witness fees, regular witness fees, etc.

- E. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- F. While either the employee or the Association may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been initiated, no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- G. The Association, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

## **ARTICLE V: DISCIPLINARY APPEALS**

The Association and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any Appeal available to an employee covered by the provisions of this Memorandum of Understanding shall be by arbitration. In agreeing to this method of resolving Appeals, both parties understand and agree that the City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of the arbitrators made pursuant to this procedure.

- A. The purpose of this procedure shall be:
  - 1. To establish orderly procedures providing a method of communication between employees and management concerning matters which may be subject to appeal.
  - 2. To provide that the appeal procedure shall be as informal as possible.
  - 3. To provide that appeals shall be settled as promptly as possible and at the lowest possible level of the procedure.
  - 4. To provide employees, individually or with a representative of their own choosing, and/or the Association, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure. Provided, however, that no individual shall be accorded any relief through the appeal procedure as to any prior action of any kind whatsoever directed specifically at his or her individual employment status unless he or she shall prosecute such a proceeding as a named party—whether or not joined with other parties.

## **ARTICLE VI: APPEALS**

For the purpose of this procedure, an “Appeal” shall be defined as a complaint or dispute as to any disciplinary or punitive action directed specifically at an individual employee’s employment status and shall include:

- a. dismissal;
- b. demotion;
- c. suspension;
- d. reduction in salary;
- e. transfer imposed for punishment or to correct deficient performance.

## **ARTICLE VII: EXCLUSIONS**

- A. The procedures set forth herein shall not apply in matters where other methods of dispute resolution have been specifically provided for in State or Federal law, such as, but not limited to, appeals of worker's compensation claims; claims made pursuant to the Fair Labor Standards Act (FLSA); unemployment insurance claims; or claims of employment discrimination based upon race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status for which a remedy is provided by the California Fair Employment Practices Act (Cal. Gov. Code Sec. 12900 et seq.), or Title VII (42 United States Code 2000e et seq.), except in cases where an employee contends his/her employment has been terminated in violation of said Acts or the City's existing policies against such discrimination.
- B. Written reprimands may be appealed to the City Manager within ten (10) days of receipt. The City Manager or designee shall review the circumstances and render a written decision within fourteen (14) days of review. The decision of the City Manager/designee shall be final and conclusive.
- C. Probationary employees who are rejected during probation shall have no right to appeal such action, except in cases where they allege that their rejection was predicated, in whole or in part upon their race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status.

## **ARTICLE VIII: GENERAL**

- A. Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
  - 1. Facilitated Mediation: Prior to submission of a grievance or appeal to arbitration, the parties may submit the grievance or appeal to non-binding interest-based facilitated mediation. The purpose of this mediation is to allow each party to present facts regarding the dispute and/or the process leading up to the submission and ask questions of the opposing party. The parties may also call witnesses and introduce evidence during the mediation.

Both parties must agree to use Facilitated Mediation, and must jointly select a mediator. If the parties cannot agree on a mediator, the provisions of Chapter 6, Article III.F, above, shall be followed for such selection. Both parties shall share all costs including the mediator's fees. No recording devices or court reporters shall be used during the facilitated mediation, and no formal transcripts will be prepared. Flip chart notes may be retained and/or transcribed.

The parties may not use any information presented and statements made at the mediation as evidence in any subsequent proceedings, and the mediator cannot be called as a witness in any subsequent proceedings. Although the parties are encouraged to participate in the facilitated interest-based mediation without the assistance of counsel, attorneys are not prohibited. If any party will be represented by an attorney during the mediation, a minimum of ten days notice must be given to the other party.

Any statements by any party or witness shall not form the basis for an Internal Affairs investigation unless such statement or evidence indicates a criminal act has occurred or an offense has occurred which could result in the termination of an employee.

- B. The time limitations established herein may be extended by mutual consent for valid reasons, such as legitimate absence of one or more parties or because of injury, illness, official obligations, or unavoidable personal obligations.
- C. If the question of arbitrability of an issue is raised by either the employee, the Association, or the City, such questions shall be determined in the first instance by the arbitrator who shall, upon request of any party, make his/her determination prior to hearing the merits of the case.

## **ARTICLE IX: PROCEDURE**

The procedure for the pre-disciplinary meeting shall be as described by the Administrative Regulation.

- A. **Selection of Arbitrator:** Should the employee or Association not be satisfied with the results of the pre-disciplinary meeting, the Association may request arbitration of the decision. Upon notice of intent to arbitrate, the Association and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California Department of Industrial Relations or, if by mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available then the Association and the City shall request another list or select an arbitrator through any other mutually agreed upon process.
- B. **Decision of the Arbitrator:** The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this Memorandum of Understanding and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto.

- C. In any disciplinary appeal from a termination, suspension, reduction in pay, transfer, or demotion, any relief which the arbitrator may grant shall be limited to a recession of the action appealed from, a restoration of any lost pay and benefits, and, where the arbitrator deems it appropriate, the imposition of substitute discipline composed of a suspension without pay of not more than six (6) months, a reduction in pay, a transfer to an established position, a demotion, remedial training, or a combination of any or all of these forms of disciplinary action.
- D. The Association and the City endorse the principle that disclosure of information relating to contemplated impositions of employee discipline may, in many instances, serve no public purpose and may be harmful to the City, the Association, and the employee concerned. This endorsement of principle is not intended to create any enforceable rights on the part of any person or entity.

#### **ARTICLE X: MISCELLANEOUS PROVISIONS**

- A. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- B. Concurrent appeals alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- C. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena. On noticed application by the City, the arbitrator may order the Association to reimburse the City for its cost incurred in paying any City employee for time spent responding to a subpoena issued at the request of the Association or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.
- D. The Association and the City agree to share equally all costs of arbitration (including, but not limited to, the arbitrator's fees and costs, the cost of court reporters, etc.), but shall be responsible for their own respective costs of making their presentation to the arbitrator, including, but not limited to, their own attorney's fees, expert witness fees, regular witness fees, etc.
- E. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- F. While either the employee or the Association may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been presented, no other grievance concerning the incident or action upon which the complaint is based may be initiated.

- G. The Association, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

## CHAPTER 7. ASSOCIATION ISSUES

### ARTICLE I. ORGANIZATION BUSINESS

- A. The president and ombudsman of the Association shall be allowed time off with pay when approved by the Municipal Employee Relations Officer (City Manager), or his/her designee for the purpose of conducting Association business. It shall be the responsibility of the employee to timely advise his/her supervisor of the expected absence from regular duties for the conduct of Association business.
- B. Other officers of the Association may be granted personal time off, paid or unpaid, for the conduct of Association business. Reasonable advance notice must be given to the respective Department Head for the use of any such time, and prior department head approval must be granted.
- C. With respect to the meet and confer process, four Association representatives shall be the maximum number of employees who will be allowed concurrent time off without loss of compensation. The Association shall submit the names of all such employee representatives to the Municipal Employee Relations Officer. The employee representatives shall request release time from their supervisors in advance of leaving their work assignments to attend meet and confer sessions. Approval of release time shall not be unreasonably denied.

### ARTICLE II. MEETING FACILITIES

The Association shall be provided with reasonable use of City facilities for the purpose of holding meetings with its members, provided such usage does not interfere with revenue derived by the City from rental of such facilities.

## CHAPTER 8. MISCELLANEOUS

### ARTICLE I. SUBSTANCE ABUSE POLICY

The City and the Association have met, discussed, and agreed upon a Substance Abuse Policy. The City and the Association have discussed the development of a program for drug and alcohol testing. The intent is to develop a drug and alcohol testing program to cover all City employees. The City and the Association agree that the presence of drugs and alcohol in the workplace is a serious problem and will cooperate to see that City employees are working in a drug and alcohol free environment.

The Association agrees and supports the City's Substance Abuse Policy. When implementation procedures are developed, those items within the scope of representation will be subject to the meet and confer process.

## **ARTICLE II. AMERICANS WITH DISABILITIES ACT**

It is the City's intent to comply fully with the requirements of the Americans with Disabilities Act, including, but not limited to, providing reasonable accommodation to employees with disabilities.

## **ARTICLE III. TUITION REIMBURSEMENT**

The City shall fund a Tuition Reimbursement Program for use by permanent FPMA members and certain probationary employees. City funding shall be up to \$50,000 during the term of this MOU.

Non-probationary FPMA employees, and probationary employees with at least six months of full-time service with the City and with approval of the City Manager or his/her designee, are eligible for reimbursement. The maximum reimbursement will be \$20,000 per employee during the time employed by the City.

Courses eligible for reimbursement are those taken at an accredited college or university related to employment, including promotional opportunities. Reimbursement will be done on a first-come, first-served basis, i.e. first submitted for reimbursement/first-paid. Degree programs (or course work not part of a degree program) must be pre-approved by the employee's Department Head and submitted to Human Resources in advance of enrollment. Reimbursement will be provided under the following conditions:

- A. Receipts must be submitted to the Human Resources Department; reimbursement will not be provided without receipts;
- B. Eligible expenses include required textbooks, tuition, fees, lab fees and equipment, but will not include parking fees or health fees related to enrollment;
- C. Employees must attain a grade of "C" or better for undergraduate work and "B" or better for graduate work. Courses providing a "pass/fail" must have a "pass" to qualify for reimbursement.

A request for reimbursement will not be considered submitted until it includes the relevant receipts and proof that the necessary grade was earned. Monies expended on tuition reimbursement will be subject to the appropriate IRS regulations.

## **ARTICLE IV. REAPPOINTMENT**

At the discretion of the City Manager, a former permanent employee who has resigned in good standing may apply for reappointment and be reappointed to a vacant position under the following conditions:

- A. A former employee who is reappointed to the same position encumbered prior to resignation may not be required to serve another probation if he/she had previously completed probation in that classification and a waiver of the probation is approved by the City Manager.

- B. A former employee who is appointed to a different position in the same classification he/she vacated shall be required to serve another probationary period in that new position.
- C. If the former employee applies for reappointment and is reappointed to the vacated position, or is appointed to another position in the same classification, within one hundred eighty (180) calendar days of the effective date of his/her resignation, the former employee shall receive the appropriate full seniority credit for previous service for determining future general leave accrual and length of service for calculating seniority credit in the event of a reduction in force after adjustment for the unpaid leave of absence.
- D. Any former employee reappointed to the same position, or appointed to another position in the same classification, shall have any previously existing sick leave bank reinstated in full and will have thirty (30) calendar days in which to elect and initiate the repurchase of previously accrued general leave at the rate in effect at the time of the liquidation of general leave.

## **ARTICLE V. REQUEST FOR CalPERS ACTUARIAL VALUATION**

The City and the Association agree to request actuarial valuations from the California Public Employees' Retirement System (CalPERS) to determine the cost of the following optional retirement benefits:

Section 21548 Pre-Retirement Optional Settlement 2 Death Benefit

Section 21574 Fourth Level of 1959 Survivor Benefits


The actuarial valuations will be requested by August 2012 in preparation for contract negotiations regarding a successor MOU. The request for the valuation is made to assist the parties in freely exchanging information during the collective bargaining process.

The City and the Association each agree to pay for one half of the fees required for the valuations. By agreeing to fund one half of the cost of the valuations, the City does not make either an express or implied endorsement of the optional benefits.

Executed this 1st day of July, 2011 by the Employee-Employer representatives whose signatures appear below.

Employee Representatives  
FREMONT POLICE MANAGERS'  
ASSOCIATION

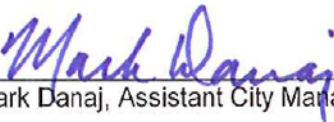
  
Mark Riggs, FPMA President

  
Mark Devine, FPMA Vice-President

  
Tom Mikkelsen, FPMA Secretary/Treasurer

Employer Representatives  
CITY OF FREMONT

  
Fred Diaz, City Manager

  
Mark Danaj, Assistant City Manager

  
Brian Stott, Human Resources Director

Approved as to Form

  
Joan A. Borger  
Assistant City Attorney

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APPENDIX A  
**FPMA JOB CLASSIFICATIONS**

<b>3525</b>	<b>Police Captain</b>
<b>3530</b>	<b>Police Lieutenant</b>

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## FPMA MOU

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ACCRUABLE LEAVE .....	5	LONG-TERM DISABILITY INSURANCE .	17
ACTING PAY .....	4	MANAGEMENT INCENTIVE PAY.....	4
AGGREGATE GENERAL LEAVE		MANDATORY INSURANCE	
ACCRUAL LIMIT .....	5	PURCHASE .....	17
AGGREGATE GENERAL LEAVE BANK...	5	MATTERS SUBJECT TO GRIEVANCE	
ALTERNATIVE BENEFITS AND		PROCEDURE .....	19
COMPENSATION PLAN .....	12	MEETING FACILITIES .....	27
AMERICANS WITH DISABILITIES ACT..	28	NEW GENERAL LEAVE BANK.....	5
APPEALS.....	23	NON-ACCRUABLE LEAVE .....	5
ASSOCIATION ISSUES .....	27	NON-DISCRIMINATION .....	1
BEREAVEMENT LEAVE .....	10	OLD GENERAL LEAVE BANK.....	5
CITY COUNCIL APPROVAL .....	3	ORGANIZATION BUSINESS .....	27
CITY RIGHTS .....	2	PARTIES TO UNDERSTANDING.....	1
CURRENT EMPLOYEES .....	7	PERSONAL LEAVE DONATION .....	11
DECISION OF THE ARBITRATOR.....	25	REAPPOINTMENT .....	28
DEFINITION OF A WORKDAY .....	4	RECOGNITION.....	1
DENTAL INSURANCE.....	14	REQUEST FOR CALPERS ACTUARIAL	
DISCIPLINARY APPEALS.....	23	VALUATION.....	29
EMPLOYEES HIRED BEFORE		RETIREE MEDICAL PREMIUM	
JANUARY 1, 2012 – TIER 1 .....	17	REIMBURSEMENT .....	14
EMPLOYEES HIRED ON OR AFTER		RETIREMENT.....	17
JANUARY 1, 2012 – TIER 2 .....	18	SABBATICAL/SICK LEAVE BANK.....	5, 7
EXCLUSIONS .....	24	SALARIES.....	3
FACILITATED MEDIATION.....	24	SELECTION OF ARBITRATOR .....	25
FAMILY LEAVE.....	10	SHORT TERM DISABILITY	
FLEXIBLE SCHEDULING.....	8	INSURANCE .....	17
FLOATING HOLIDAY .....	6	SICK LEAVE BANK .....	5, 8
GENERAL LEAVE .....	4	STATE LAW COMPLIANCE .....	1
GENERAL LEAVE ACCRUAL.....	6	SUBSTANCE ABUSE POLICY .....	27
GRIEVANCE PROCEDURE.....	19	TERM OF UNDERSTANDING .....	2
HEALTH BENEFITS ALLOWANCE		TOTAL AGREEMENT .....	2
CITY CONTRIBUTION .....	12	TUITION REIMBURSEMENT .....	28
HOLIDAYS - HOLIDAY PAY/TIME OFF....	8	UNIFORM/SAFETY EQUIPMENT	
INSURANCE .....	12	ALLOWANCE .....	3
JOB CLASSIFICATIONS.....	31	UTILIZATION OF “OLD GENERAL	
LEAVES .....	4	LEAVE” BANK.....	6
LIFE INSURANCE .....	16	VALIDITY OF MEMORANDUM.....	2
LIQUIDATION OF LEAVE .....	7	VISION INSURANCE.....	14